Supreme Court, U.S.
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No. 99- 662

IN THE

Supreme Court of the United States

EDWARD J. SHOEN, *et al.*,

Petitioners,

v.

SAMUEL W. SHOEN, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether an Arizona state court judgment that required Respondents to transfer stock to Petitioners upon the payment of $461,838,000, together with accrued interest and costs, was properly characterized by the Court of Appeals, the Bankruptcy Appellate Panel, and the Bankruptcy Court as a judicially mandated sale of stock, as opposed to an unsecured debt?

RESPONDENTS' RULE 29.6 STATEMENT

The corporate respondents have no parent corporations, and no publicly-held company owns ten percent or more of their stock.

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Respondents Samuel W. Shoen, Cecilia M. Hanlon (aka Cecilia M. Shoen-Hanlon), Katrina Carlson (aka Katrina Shoen-Carlson), Michael Shoen, Sawmill Inc. (now called Katabasis International, Inc.), Cemar, Inc., Kattydid, Inc., and Mickl, Inc. respectfully request the Court to deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Petition omits the published opinion of the United States Bankruptcy Court for the District of Arizona, reported at 192 B.R. 442 (D. Ariz. 1996). The Bankruptcy Court incorporated that opinion by reference into the order from which Petitioners appealed. (*See* Pet. App. 39a-41a.)

STATEMENT OF THE CASE

In 1995, after years of litigation, the Arizona Superior Court entered an innovative and unusual judgment (the "Judgment") against Petitioners for, *inter alia*, breaching their fiduciary duties to Respondents. The Judgment required Respondents to transfer their stock in AMERCO to Petitioners upon payment of $461,838,000, together with "accrued interest and taxable costs." Rather than pay that amount and acquire Respondents' stock, Petitioners filed a Chapter 11 bankruptcy petition and submitted several reorganization plans. Each of these plans sought to discharge Petitioners' monetary obligations to Respondents by paying less than the amount specified in the Judgment *and* to acquire Respondents' stock. Put differently, Petitioners sought to use the Bankruptcy Court proceedings to acquire Respondents' stock without complying with the Judgment's terms.

The Bankruptcy Court rejected Petitioners' "have-your-cake-and-eat-it-too" approach, reasoning that simply discharging "the monetary obligation imposed by the Judgment does not entitle the [Petitioners] to require that the [Respondents] transfer their AMERCO common stock to the [Petitioners]." *Shoen v. Shoen*, 193 B.R. 302, 315 (D. Ariz. 1996). Petitioners could only acquire *new* property in bankruptcy, the Bankruptcy Court explained, in accordance with applicable state law. In this case, the Judgment set forth the applicable state law. *Id.* at 316-17.

Petitioners eventually conceded that to acquire the AMERCO stock, they would need to pay Respondents $461,838,000. Petitioners argued, however, relying on 11 U.S.C. § 502(b)(2), that they could acquire the stock without complying with the Judgment's interest terms. The Bankruptcy Court rejected this argument for the same reasons it rejected Petitioners' original plans: if Petitioners wanted to acquire the AMERCO stock pursuant to the Judgment, they were required to comply fully with all the Judgment's terms "and pay the interest, both pre- and post-petition." (Pet. App. 40a.)

The Bankruptcy Appellate Panel ("BAP") affirmed, explaining that while postpetition interest is not available in Chapter 11 in connection with an unsecured judgment debt, in this case interest was "nevertheless required to effectuate the terms of the sale of stock." *Shoen v. Shoen*, 176 F.3d 1150, 1162 (9th Cir. 1999) (Pet. App. 27a). The Ninth Circuit affirmed the BAP decision, adopted the BAP's reasoning, and attached the BAP's opinion to its own. *See id.* at 1151 & n.2 (Pet. App. 3a).

REASONS FOR DENYING THE WRIT

I. THIS CASE DOES NOT RAISE ANY ISSUES WARRANTING SUPREME COURT REVIEW.

This case is not about whether a Chapter 11 creditor may collect post-petition interest on an unsecured claim under 11 U.S.C. § 502(b)(2). Everyone — including the seven judges that previously addressed this case — agrees that Section 502(b)(2) does not generally permit such interest to accrue. *See, e.g., Shoen*, 176 F.3d at 1161 (Pet. App. 25a) (explaining that Respondents acknowledge that "interest accruing on a postpetition, unsecured debt is generally disallowed in bankruptcy under § 502(b)(2)."). Everyone further agrees that money judgments generally constitute unsecured claims, and that if Petitioners had sought simply to discharge the monetary obligations imposed by the Judgment, Respondents would not be entitled to post-petition interest. *See Shoen*, 193 B.R. at 315 (explaining that the "courts also recognize that a money judgment against a debtor creates a 'claim' under the judgment that falls within the scope of [the] Bankruptcy Code. . . ."). The Ninth Circuit's decision challenges none of these basic bankruptcy principles.

Rather than raising bankruptcy issues of widespread application, this case instead involves the unique question whether the particular state court judgment entered by the Arizona Superior Court should, in the context of Petitioners' bankruptcy reorganization plans, be treated as a judicially-mandated sale of stock, or rather as an unsecured claim. Six of the seven judges who have examined this issue below agreed that this particular Judgment is best characterized as a judicially-mandated sale of stock — and for good reason.

Although the Judgment is admittedly "rather unusual," *Shoen*, 176 F.3d at 1151, it plainly does more than impose a monetary obligation on Petitioners; it requires Respondents to sell Petitioners their stock at a judicially-mandated price. Bankruptcy looks to state law to determine the nature and extent of a debtor's property interests, and transfers such interests intact to the bankruptcy estate. *See Butner v. United States*, 440 U.S. 48, 55 (1979); *Fisher v. Apostolov*, 155 F.3d 876, 880 (7th Cir. 1998); *Coupon Clearing Serv., Inc. v. Foothill Capital Corp.*, 113 F.3d 1091, 1099 (9th Cir. 1997). The property interests transferred to the bankruptcy estate are fixed, and may not be enlarged, enhanced, or altered by the bankruptcy court. *See Coupon*, 113 F.3d at 1099.

Before filing their Chapter 11 petition, Petitioners did not own Respondents' AMERCO stock. Accordingly, Petitioners' bankruptcy estate did not include Respondents' AMERCO stock. Petitioners could have sought in the bankruptcy proceedings simply to discharge Respondents' monetary claims under the Judgment, and thus avoided "the debt obligation to pay post-petition interest." *Shoen*, 193 B.R. at 317. But instead, Petitioners sought to *acquire* Respondents' AMERCO stock. The Bankruptcy Court, BAP, and Ninth Circuit correctly held that if Petitioners wanted to acquire Respondents' AMERCO stock, they could only do so by complying with the only state law granting them a right to acquire such stock — the Judgment. Even in bankruptcy, one may not acquire new property without paying the seller the amount he is entitled to for the property under state law.

In this case, the applicable state law — the Judgment — required Petitioners to pay interest. Thus, the Ninth Circuit's opinion is correct. In any event, since the decision below

turns on the interpretation of an "unusual" state court judgment, it poses no issues worthy of Supreme Court review. *See* Rule 10, Rules of the Supreme Court of the United States ("A petition for review is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law.").

II. THE OPINION BELOW DOES NOT CONFLICT WITH DECISIONS FROM OTHER COURTS.

Petitioners maintain that the Ninth Circuit's decision: (1) conflicts with decisions of other courts that have held that Section 502(b)(2) precludes post-petition interest from accruing on judgments; (2) carves out a new exception under Section 502(b)(2) in conflict with the Seventh and Fourth Circuits; and (3) is contrary to the holding of *In re Seal*, 192 B.R. 442 (W.D. Mich. 1996). (Pet. at 12-18.)

Each of these arguments fails. In light of the highly case-specific nature of this matter, the Ninth Circuit's decision conflicts with no other reported decision. As the Bankruptcy Court observed, "the Debtors have not referred this Court to a single case involving similar facts, and this Court has been unable to locate any through independent research." 193 B.R. at 314.

a. The decisions involving judgments on which Petitioners rely — *Bursch v. Beardsley & Piper*, 971 F.2d 108 (8th Cir. 1992), *In re United States Lines, Inc.*, 199 B.R. 476 (Bankr. S.D.N.Y. 1996), and *In re Fifth Ave. Jewelers, Inc.*, 203 B.R. 372 (Bankr. W.D. Pa. 1996) — all involved ordinary money judgments and the straightforward application of Section 502(b)(2). In none of these cases did

the debtors attempt to acquire new property from another without complying with the state law governing the property's acquisition. None of these cases posed the issue whether the judgments constituted an unsecured claim, nor did these cases include the proper characterization of a state court judgment. Thus, the general rule recognized in these cases remains alive and well in the Ninth Circuit, and is in no way impacted by this case. *See Shoen*, 176 F.3d at 1161; *Great Lakes Higher Educ. v. Pardee*, No. 98-15942, 1999 WL 965651, *1 (9th Cir. Oct. 25, 1999) (acknowledging the general rule that Section 502(b)(2) precludes postpetition interest on unsecured claims).

b. Petitioners' contention that the Ninth Circuit's decision creates an *exception* to Section 502(b)(2), thereby conflicting with *In the matter of Fesco Plastics Corp.*, 996 F.2d 152 (7th Cir. 1993) and *In re Twin Parks Ltd. Partnership*, 720 F.2d 1374 (4th Cir. 1983), is equally unavailing. The courts in those cases refused to establish certain new exceptions to Section 502(b)(2). However, the issue *whether* Section 502(b)(2) applied — thereby requiring an exception — was not posed by those cases. Furthermore, those cases did not involve a debtor's attempt to acquire new property from another. The Ninth Circuit did not create an exception to Section 502(b)(2) here; it held that Section 502(b)(2) did not apply to the Judgment because of the Judgment's particular nature and how Petitioners sought to treat it. *Shoen*, 176 F.3d at 1151 (Pet. App. 26a-27a).

c. The decision below does not conflict with *Seal*. In *Seal* the debtor had acquired the property in issue — an automobile — *before* filing bankruptcy. The creditor, however, improperly and illegally refused to transfer title. 192 B.R. at 453 & n.15. The bankruptcy court ordered the

Michigan Secretary of State to issue a replacement title, *id.* at 448, sanctioned the creditor, *id.* at 456, and offset that sanction against what the debtor owed the creditor for the creditor's claim, *id.* at 457. Because the offset extinguished the creditor's claim, the debtor now owned the vehicle "free and clear." *Id.* at 458.

Because the *Seal* debtor had acquired the vehicle before filing bankruptcy, the vehicle became part of the bankruptcy estate at the time of filing. *Seal* did not involve a debtor's attempt to obtain new property in bankruptcy while circumventing applicable state law.

In any event, even if the Ninth Circuit's decision conflicted with a single case from the Bankruptcy Court of the Western District of Michigan, this Court's review would not be warranted. *See* Rule 10(a), Rules of the Supreme Court of the United States (review may be appropriate when Court of Appeals decides an "important matter" in conflict with decisions of other Court of Appeals).

III. THE FACT THAT THIS CASE ARISES FROM THE NINTH CIRCUIT IS NO REASON TO GRANT THE PETITION FOR CERTIORARI.

Petitioners' final argument is that since this case involves an example of the Ninth Circuit's "novel" application of law, the Court should grant the Petition. (Pet. App. at 19.) But it is the highly unusual circumstances of this case that are novel, not the Ninth Circuit's application of law. This Court has not adopted a rule providing for heightened scrutiny of petitions for certiorari for Ninth Circuit decisions; it routinely and correctly denies such petitions when they do not present issues meriting the grant of certiorari. *See, e.g., Jensen v.*

Internal Revenue Serv., 165 F.3d 916 (9th Cir.), *cert. denied*, 67 U.S.L.W. 3784 (1999); *Pellegrino v. Fanter*, 163 F.3d 607 (9th Cir.), *cert. denied*, 67 U.S.L.W. 3784 (1999); *Rowland v. Rand*, 154 F.3d 952 (9th Cir.), *cert. denied*, 67 U.S.L.W. 3561 (1999).

CONCLUSION

The Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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